

AO 120 (Rev. 2/99)

<b>TO: Mail Stop 8</b> <b>Director of the U.S. Patent &amp; Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
filed in the U.S. District Court Northern District California on the ☒ Patents or ☐ Trademarks:

DOCKET NO. CV 11-02264 JCS	DATE FILED 5/6/2011	U.S. DISTRICT COURT 450 Golden Gate Avenue, 16 <sup>th</sup> Floor, San Francisco CA 94102
PLAINTIFF AGSAVER LLC		DEFENDANT VALENT USA CORPORATION
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
14,440,566		***See Attach Complaint***
24,770,695		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY		
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK Richard W. Wicking	(BY) DEPUTY CLERK Gina Agustine-Rivas	DATE May 10, 2011
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Copy 1—Upon initiation of action, mail this copy to Commissioner    Copy 3—Upon termination of action, mail this copy to Commissioner  
Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner    Copy 4—Case file copy

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20 UNITED STATES DISTRICT COURT  
21 NORTHERN DISTRICT OF CALIFORNIA  
22 \_\_\_\_\_ DIVISION

23 AGSAVER LLC,

24 Plaintiff,

25 vs.

26 VALENT U.S.A. CORPORATION,

27 Defendant.  
28

Case No.

**COMPLAINT FOR FALSE PATENT  
MARKING**

**[JURY TRIAL DEMANDED]**

E-filing

ORIGINAL  
FILED

MAY - 6 2011

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT,  
NORTHERN DISTRICT OF CALIFORNIA

I hereby certify that the annexed  
instrument is a true and correct copy  
of the original on file in my office.

ATTEST:  
RICHARD W. WIEKING  
Clerk, U.S. District Court,  
Northern District of California  
By GINA AGUSTINE  
Deputy Clerk

Date 5/18/11

JCS

COPY

1 Plaintiff/Relator AgSaver LLC ("AgSaver" or "Plaintiff"), by and through its counsel,  
2 makes the following allegations against Defendant Valent U.S.A. Corporation ("Valent"):

3 **NATURE OF THE ACTION**

4 1. This is a *qui tam* action under the false patent marking provisions set forth in § 292  
5 of the Patent Act, as amended, 35 U.S.C. § 292.

6 **PARTIES**

7 2. Plaintiff AgSaver is a limited liability corporation organized and existing under the  
8 laws of the State of Arkansas, having a principal place of business in McGehee, Arkansas.  
9 AgSaver is the holder of seven pesticide registrations issued by the United States Environmental  
10 Protection Agency ("EPA") and has several additional pesticide registration applications pending  
11 with the EPA. Pesticides registered by AgSaver are distributed throughout the United States.

12 3. Defendant Valent is a corporation organized and existing under the laws of the  
13 State of California, having, on information and belief, a principal place of business at 1600  
14 Riviera Avenue, Suite 200, Walnut Creek, California 94596-8025. Valent is the regional  
15 headquarters in the Americas for, and a wholly-owned subsidiary of, Sumitomo Chemical  
16 Company, Ltd. ("Sumitomo").

17 4. Sumitomo, a company organized and existing under the laws of Japan, is a global  
18 leader in the discovery of crop protection, plant enhancement and other products for food health,  
19 and the environment and has developed many agricultural pesticides based on its own proprietary  
20 technologies that are widely used throughout the world, including the United States. In 2009,  
21 Sumitomo was the ninth largest agricultural chemical company in the world, with sales in excess  
22 of \$1.4 billion.

23 5. Valent was formed in 1988 as a joint venture between Sumitomo and Chevron  
24 Chemical Co. ("Chevron"), a subsidiary of Chevron Corp., to develop and market their existing  
25 and future agrochemical products throughout the United States.

26 6. In 1991, Sumitomo purchased Chevron's 50% interest in Valent. As part of the  
27 buyout, Chevron agreed to withdraw from the U.S. agrochemical market and, upon information  
28 and belief, agreed to assign its U.S. agrochemical patents to Sumitomo.



1 pesticides, one of which is Clethodim. This patent was reissued on September 1, 1987 (Re.  
2 32,489) to broaden the scope of its claims. U.S. Patent No. 4,440,566, as reissued, shall be  
3 referred to herein as the "566 Patent." It is Plaintiff's belief that Valent, Sumitomo's U.S.  
4 headquarters, was granted the right to use this patent on behalf of Sumitomo for manufacture and  
5 distribution of agrochemical products in the United States. The products produced by Valent  
6 using the pesticide covered by the '566 Patent are sold by Valent under variations of the name  
7 "Select." A true and complete copy of the '566 Patent is attached hereto as **Exhibit A**.

8 16. The '566 Patent expired on August 9, 2002.

9 17. Sumitomo is the owner of United States Patent No. 4,770,695, issued on  
10 September 13, 1988, for "N-Substituted Phenyl Tetrahydrophthalimide Compounds, and Their  
11 Production and Herbicidal Use," a pesticide (the "'695 Patent"). On information and belief,  
12 Valent, Sumitomo's U.S. headquarters, was granted the right to use this patent on behalf of  
13 Sumitomo for manufacture and distribution of agrochemical products in the United States. The  
14 products produced by Valent using the pesticide covered by the '695 Patent are sold by Valent  
15 under variations of the name "Resource." A true and complete copy of the '695 Patent is attached  
16 hereto as **Exhibit B**.

17 18. The '695 Patent expired on July 21, 2006.

18 **U.S. EPA Regulation of Pesticides and Pesticide Labels**

19 19. The sale and distribution of pesticides in the U.S. is subject to one of the strictest  
20 regulatory regimens in the U.S., which in scientific rigor and regulatory breadth is on par with the  
21 registration of drugs. Under the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7  
22 U.S.C. § 136 *et seq.*, it is unlawful to sell or distribute a pesticide in the U.S. without a  
23 registration issued by the EPA. 7 U.S.C. § 136a(a).

24 20. A registrant may not sell or distribute a product with a label that is not approved  
25 by the EPA. 7 U.S.C. § 136a(c)(3)(5); 40 C.F.R. § 152.130 It is a violation of FIFRA for any  
26 person to use a pesticide in a manner inconsistent with its labeling. 7 U.S.C. § 136j(a)(2)(G).

27 21. The EPA strictly regulates the content and format of pesticide labels, which means  
28 the written, printed, or graphic matter on, or attached to, the pesticide or any of its containers or

1 wrappers. 7 U.S.C. § 136(p)(1).

2 22. As part of the process of registering a pesticide product, the EPA reviews and  
3 approves the content and format of the label that must appear on the pesticide product and assigns  
4 a unique pesticide registration number to the product.

5 23. The EPA's regulations set forth in detail the information that must be included in a  
6 pesticide label. 40 C.F.R. Part 156. Each applicant for a pesticide registration must provide to  
7 the EPA the proposed label text for the pesticide product which conforms to the EPA's  
8 requirements for label content and format. 40 C.F.R. § 152.50(e).

9 24. Sale or distribution of a pesticide with a label that is false or misleading in any  
10 particular, including both pesticidal and non-pesticidal claims, violates FIFRA by virtue of being  
11 misbranded. 7 U.S.C. §§ 136(q)(1)(A); 136j(a)(1)(F); 40 C.F.R. Part 156.10(a)(5).

12 25. Upon issuance of a pesticide product registration, the EPA provides to the  
13 registrant documentation of the approved registered label by date-stamping a copy of the  
14 approved label text and returning it to the applicant. In addition, EPA provides notice to the  
15 public by posting the label on EPA's label website, the Pesticide Product Label System ("PPLS"),  
16 at <http://www.epa.gov/pesticides/pestlabels/>.

17 26. Prior to the sale or distribution of a pesticide product, the registrant is required to  
18 file with the EPA a copy of the final printed label that will appear on the product as distributed.  
19 40 CFR § 156.10(a)(6). With the exception of non-FIFRA text that may be added or removed  
20 without notification, the final printed label must reflect *verbatim* the content and format of the  
21 label approved by EPA presented in a graphic depiction designed by the registrant.

22 27. Amendments to an EPA-approved pesticide label may be accomplished through  
23 various means depending on the nature of the change.

24 28. The majority of amendments that can be made to a pesticide label require the  
25 submission to the EPA of a formal application for an amendment and an EPA review process of  
26 three months or more. 40 C.F.R. § 152.44(a).

27 29. Certain minor amendments may be accomplished through a "notification" process  
28 that involves a simplified filing with the EPA and an expedited, thirty (30) day review period. 40

1 C.F.R. § 152.46(a); EPA Pesticide Registration Notice 98-10, Notifications, Non-Notifications  
2 and Minor Formulation Amendments (Oct. 22, 1998). An example of such a minor amendment  
3 would be the addition of a brand name.

4 30. Upon acceptance of a proposed amendment to a pesticide product label filed either  
5 as a formal amendment or as a notification, the EPA provides documentation of the approved  
6 amended label text to the registrant by date-stamping a copy of the approved amended label text  
7 and returning it to the registrant. In addition, EPA provides notice to the public by posting the  
8 label on PPLS at <http://www.epa.gov/pesticides/pestlabels/>.

9 31. Other minor label amendments which do not involve text related to the regulated  
10 status of the product under FIFRA may be made without any notification to the EPA. 40 C.F.R. §  
11 152.46; EPA Pesticide Registration Notice 98-10, Notifications, Non-Notifications and Minor  
12 Formulation Amendments (Oct. 22, 1998).

13 32. A party who amends a product label must within 18 months of the EPA's approval  
14 of the amendment only sell or distribute the affected product with the amended label. 40 C.F.R. §  
15 152.130(c).

16 33. The marking of a pesticide product label with a patent claim is non-FIFRA text,  
17 and consequently, a label may be amended by adding or removing a patent number without  
18 notification to the EPA. Although non-FIFRA text may be changed without notification to EPA,  
19 any text on a label must be truthful and not misleading.

#### 20 Valent's Management of Its Pesticide Labels

21 34. Valent holds at least eighty-seven (87) active EPA pesticide registrations and  
22 Valent BioSciences, which is under the same management as Defendant Valent, holds over three  
23 hundred and eleven (311) EPA pesticide registrations.

24 35. Under FIFRA, pesticide labels are subject to strict regulation by the EPA to ensure  
25 that the product can be used without unreasonable risk to people, non-target organisms, and the  
26 environment when used as directed on the product's label. *See, supra*, ¶¶ 15-31; **Exhibit C**.  
27 Ensuring the accuracy of labels for pesticide products is an essential component of this regulatory  
28 regime. *See id.* Valent acknowledges that "[a]ll of its products are continually reassessed by

1 EPA and state agencies to ensure that safety data and labels meet the latest scientific and  
2 regulatory standards.” See Exhibit C (emphasis added).

3 36. Valent recognizes on its website the importance of the accuracy of its product  
4 labels, given that each such label is a “legal document that defines the approved use of the  
5 product, use rates, proper application methods, safety equipment and protective clothing  
6 requirements, and action to be taken in case of emergency.” A true and complete copy of the  
7 relevant pages from Valent’s website is attached hereto as Exhibit C.

8 37. Given the nature of the regulation of pesticide product labels and the processes for  
9 amending those labels, Valent devotes significant resources to the management of its registrations  
10 and labels, and pays exacting attention to the label text and the appropriate procedures for  
11 amending any label. Valent employs staff dedicated to the management of its labels, including  
12 ensuring the accuracy of the labels it places on its products and exploring opportunities for adding  
13 uses to the existing labels. For example, Valent’s Field Market Development group is comprised  
14 of “specialists” who concentrate, among other things, “on label expansions . . . to help ensure that  
15 [Valent’s] products are used properly and fit local conditions and production practices.” See  
16 Exhibit C.

17 38. Despite this focus on the content of pesticide labels, Valent continues to mark the  
18 labels of certain of its pesticide products with the expired ‘566 and ‘695 Patents as if those patents  
19 were still in force and applicable to those products.

20 39. By distributing pesticide products bearing false statements with respect to patent  
21 protection for the product, Valent distributed misbranded pesticides in violation of FIFRA.

#### 22 Valent’s Management of Its Patents

23 40. Defendant Valent, Sumitomo, and Valent BioSciences are sophisticated pesticide  
24 manufacturing companies. Sumitomo has been assigned more than 4,000 patents, and Valent and  
25 Valent BioSciences collectively have over 62 patents assigned specifically to their names. Valent  
26 and Valent BioSciences also collectively hold over 398 EPA registrations.

27 41. Plaintiff is informed and believes that Sumitomo and its wholly-owned  
28 subsidiaries, like Valent, employ in-house legal departments and outside counsel who monitor



Sumitomo's intellectual property, are aware that patents have limited terms generally, and are aware of the terms and expiration dates of the '566 and '695 Patents. Plaintiff is informed and believes that Valent or its predecessors in interest were represented with respect to the '566 and '695 Patents by patent attorneys with decades of experience as PTO examiners and patent prosecutors and who are aware of the terms of patents generally and who were aware of the terms and expiration dates of the '566 and '695 Patents. Representative profiles of these attorneys are attached hereto as Exhibit J.

42. Valent has also demonstrated its awareness of the expiration dates of its patents and shown its sophisticated ability to manage its intellectual property, including its patents. For example, Valent and its parent company, Sumitomo, on January 31, 2008, jointly filed complaints in the U.S. District Court for the Western District of Wisconsin, the U.S. District Court for the Northern District of California, and the International Trade Commission, collectively alleging infringement and seeking to declare a competitor's insecticide patent invalid. The complaint that Valent and Sumitomo filed in the Wisconsin District Court specifically referenced the expiration date of the Sumitomo patent at issue in that litigation. Valent's sworn representation to the Court with regard to the expiration date of one of its agricultural pesticide patents demonstrates that Valent tracks and is cognizant of the expiration dates of its patents on agricultural pesticides.

43. Upon information and belief, Valent was put on notice that its '566 Patent expired by applications of at least four generic pesticide manufacturers to register generic versions of its Select 2EC Herbicide and Select Herbicide products, after the expiration of the '566 Patent.

44. For example, on September 10, 2002, approximately one month after the '566 Patent expired, generic pesticide manufacturer Arysta Lifescience North America, LLC received EPA approval to register a substantially similar version of Valent's Select 2EC Herbicide. Arysta's generic pesticide, Clethodim 2EC Herbicide (EPA Registration No. 66330-328), contains the same active ingredient, Clethodim, in the same percentage concentration, and is registered for the same uses as Valent's Select 2EC Herbicide.

45. Valent received EPA approval to amend its Select 2EC Herbicide label six times since EPA's approval of Arysta's generic pesticide registration, yet never removed the false '566

1 Patent marking.

2 46. Further, it is Plaintiff's belief that Valent had actual notice of the expiration of its  
3 '566 Patent prior to September 12, 2003, when the generic pesticide manufacturer AGAN  
4 Chemical Manufacturing, Ltd. received EPA approval for its generic pesticide Clethodim 37%  
5 MUP (EPA Registration No. 11603-34), which uses the active ingredient, Clethodim, that was  
6 covered by the '566 Patent. AGAN, in its registration application for its generic pesticide  
7 Clethodim 37% MUP, relied upon scientific data previously filed with the EPA by Valent in  
8 connection with its Select Line Products (defined below).

9 47. When a generic pesticide manufacturer, like AGAN, wants to register a generic  
10 pesticide with the EPA using scientific data already filed with the EPA by a prior registrant, the  
11 generic pesticide manufacturer must pay the prior registrant to use that data to obtain EPA  
12 registration of its generic pesticide.

13 48. Upon information and belief, AGAN notified Valent of its intent to use the  
14 scientific data for Clethodim filed by Valent with the EPA in connection with its Select Line  
15 Products (defined below) prior to the registration of Clethodim 37% MUP with the EPA and  
16 offered to pay Valent a sum of money for use of this data.

17 49. Each of Valent's Select Line Products (defined below) use the active ingredient  
18 Clethodim, which was covered by the '566 Patent.

19 50. Upon information and belief, Valent knew or should have known that it needed to  
20 modify the labels, marketing, and advertising for its Select Line and Resource Line Products to  
21 remove any indicia that such products are patented after the '566 Patent and '695 Patent expired.

22 **Valent's Marking of Unpatented Articles In Violation of 35 U.S.C. § 292**

23 51. Section 292 of the Patent Act (35 U.S.C. § 292) provides that "[w]hoever marks  
24 upon, or affixes to, or uses in advertising in connection with any unpatented article, the word  
25 'patent' or any word or number importing that the same is patented, for the purpose of deceiving  
26 the public...[s]hall be fined not more than \$500 for every such offense."

27 52. The statute further provides that "[a]ny person may sue for the penalty, in which  
28 event one-half shall go to the person suing and the other half to the use of the United States."

53. Subsequent to the expiration of the '566 and '695 Patents, Defendant Valent has continued to mark, affix to, and use in advertising, labels on its Select Line Products and Resource Line Products (as defined below) which contain words or numbering falsely indicating that such products are patented, in violation of § 292 of the Patent Act.

54. Valent U.S.A. Corporation holds registrations from EPA for at least three (3) products which were at one time covered by the '566 patent. Valent uses some variation of the name "Select" for these products (collectively, the "Select Line Products"):

(a) Select<sup>®</sup> 2 EC Herbicide is registered to Valent under EPA Registration Number 59639-3 and has been since at least January 28, 1992. The label for Select<sup>®</sup> 2 EC Herbicide currently contains a false mark for the '566 Patent, and has continuously contained such a false mark since the patent's expiration on August 9, 2002. Valent has amended its Select<sup>®</sup> 2 EC Herbicide label no less than six times since the expiration of the '566 Patent, yet has never removed the false patent marking from the label. These amendments were approved by the EPA on May 13, 2003, June 17, 2003, December 31, 2003, April 13, 2004, April 18, 2007, and May 15, 2007. A true and complete copy of Valent's most recent amendment to the Select<sup>®</sup> 2 EC Herbicide label, as approved by EPA on May 15, 2007, more than 4 years and 9 months after the expiration of the '566 Patent, is attached hereto as **Exhibit D**.

(b) Select<sup>®</sup> Herbicide is registered to Valent under EPA Registration Number 59639-78 and has been since at least July 21, 1993. The label for Select<sup>®</sup> Herbicide currently contains a false mark for the '566 Patent, and has continuously contained such a false mark since the patent's expiration on August 9, 2002. Valent has amended its Select<sup>®</sup> Herbicide label no less than six times since the expiration of the '566 Patent, yet has never removed the false patent marking from the label. These amendments were approved by the EPA on November 27, 2002, May 13, 2003, June 17, 2003, December 31, 2003, November 15, 2004, and March 8, 2010. A true and complete copy of Valent's most recent amendment to its Select<sup>®</sup> Herbicide label, as approved by EPA on March 8, 2010, more than 7 years and 8 months after the expiration of the '566 Patent, is attached

hereto as Exhibit E.

(c) Select<sup>®</sup> Super Herbicide is registered to Valent under EPA Registration Number 59639-102 and has been since at least March 31, 1998. The label for Select<sup>®</sup> Super Herbicide currently contains a false mark for the '566 Patent, and has continuously contained such a false mark since the patent's expiration on August 9, 2002. Valent most recently obtained EPA approval to amend its Select<sup>®</sup> Super Herbicide label on June 2, 2003, almost 10 months after the expiration of the '566 Patent, yet did not remove the false patent marking from the label. A true and complete copy of the falsely marked label for Select<sup>®</sup> Super Herbicide, as approved by EPA on June 2, 2003, is attached hereto as Exhibit F.

55. Valent has marked, affixed to, or used in advertising the word "patent" or other words or numbers implying patents in connection with the unpatented Select Line Products continuously since the '566 Patent expired on August 9, 2002. Valent affixes the final printed version of the EPA-approved labels, or labels substantially similar thereto, which contain the false '566 Patent mark to its Select Line Products listed above which are commercial manufactured and sold to consumers.

56. Valent holds registrations from EPA for at least two (2) products which were at one time covered by the '695 patent. Valent uses some variation of the name "Resource" for these products (collectively, the "Resource Line Products"):

(a) Resource<sup>®</sup> Herbicide is registered to Valent under EPA Registration Number 59639-82 and has been since at least November 18, 1994. The label for Resource<sup>®</sup> Herbicide currently contains a false mark for the '695 Patent, and has continuously contained such a false mark since the patent's expiration on July 21, 2006. Valent most recently obtained EPA approval to amend its Resource<sup>®</sup> Herbicide label on February 5, 2010, over 3½ years after the expiration of the '695 Patent, yet did not remove the false patent marking from the label. A true and complete copy of the falsely marked label for Resource<sup>®</sup> Herbicide, as approved by EPA on February 5, 2010, is attached hereto as Exhibit G.

(b) Resource<sup>®</sup> 80 WP Herbicide is registered to Valent under EPA Registration Number 59639-100 and has been since at least January 13, 1998. The label for Resource<sup>®</sup> 80 WP Herbicide currently contains a false mark for the '695 Patent, and has continuously contained such a false mark since the patent's expiration on July 21, 2006. Valent has not obtained EPA approval to amend its Resource<sup>®</sup> 80 WP Herbicide label since November 29, 1999. This label, approved on November 29, 1999, continues to be used by Valent on its Resource<sup>®</sup> 80 WP Herbicide products. A true and complete copy of the label for Resource<sup>®</sup> 80 WP Herbicide, as approved by EPA on November 29, 1999, is attached hereto as **Exhibit H**.

57. Valent has marked, affixed to, or used in advertising the word "patent" or other words or numbers implying patents in connection with the unpatented Resource Line Products. Valent affixes the final printed version of the EPA-approved labels, or labels substantially similar thereto, which contain the false '695 Patent mark to its Resource Line Products listed above which are commercial manufactured and sold to consumers.

58. Valent advertises its falsely marked products and posts its falsely marked labels on its website <http://www.valent.com>, and pays to have its falsely marked labels advertised on third-party websites like <http://www.cdms.net>. These third-party websites contain searchable databases of agricultural pesticide product labels and other information to assist growers in selecting agricultural pesticide products and informing the agricultural community at large about the availability of competing products. A copy of screenshots of Valent's falsely marked labels displayed on its website, <http://www.valent.com>, and the <http://www.cdms.net> website are attached hereto as **Exhibit I**.

59. Defendant Valent had multiple opportunities to remove the offending statements from its labels at no cost when it was already revising the labels on its Select Line Products and Resource Line Products, but it did not do so.

60. Valent could have at any point removed the expired patent references from its labels without any EPA review required, but it did not do so.

61. Valent has no reasonable business purpose for continuing to mark its pesticide

1 products with expired patents when presented with multiple no-cost opportunities to remove such  
2 markings.

3 **The Adverse Economic Impacts of Valent's Marking of**  
4 **Certain of Its Pesticide Products with Expired Patents**

5 62. AgSaver's Clethodim (EPA Registration number 83772-7), which is sold,  
6 marketed, and distributed as CropSmart Clethodim 2 EC (EPA Registration number 83772-7-  
7 85945), contains the same active ingredient as, has been determined by the EPA to be  
8 substantially similar to, and competes with Valent's Select® Herbicide and Select® 2 EC  
9 Herbicide products listed above. AgSaver's pesticides bear no patent marking.

10 63. Upon information and belief, Defendant Valent marks and advertises or has  
11 marked and advertised its Select Line Products and its Resource Line Products with words or  
12 numbering indicating that such products are patented, with the intent to deceive the public  
13 thereby. Among other economic impacts, by falsely marking its products and advertising, Valent  
14 falsely represents to its customers and potential customers that its products are superior to  
15 unpatented products.

16 64. Defendant Valent's conduct deters existing and potential competing registrants  
17 from seeking generic registration of products containing the same active ingredients. Valent has  
18 made the process of entering the market for potential competitors producing generic brands more  
19 costly by creating a need to conduct an expensive investigation to determine the validity of the  
20 patents prominently marked on its products.

21 **FIRST CAUSE OF ACTION**

22 **(FALSE PATENT MARKING CLAIM FOR '566 PATENT)**

23 65. Plaintiff incorporates paragraphs 1-64 above as if fully set forth herein.

24 66. Under 35 U.S.C. § 292, any product marked with a patent number must be covered  
25 by that patent.

26 67. Valent marked, affixed, and/or advertised the Select Line Products as being  
27 covered by the '566 Patent.

28 68. The Select Line Products have ceased being covered by the '566 Patent.

69. Valent's demonstrated awareness of its patents and patent expiration dates establishes that it knew or should have known that the Select Line Products have ceased being covered by the '566 Patent.

70. Upon information and belief, Valent intended to deceive the public by marking, affixing, or advertising the Select Line Products as being covered by the '566 Patent.

71. Defendant Valent has violated 35 U.S.C. § 292 by falsely marking, affixing, and/or advertising its Select Line Products as being subject to the '566 Patent with intent to deceive the public when those products are unpatented.

72. Plaintiff is a "person" within the meaning of 35 U.S.C. § 292 and is entitled to bring suit pursuant to that statute.

## SECOND CAUSE OF ACTION

### (FALSE PATENT MARKING CLAIM FOR '695 PATENT)

73. Plaintiff incorporates paragraphs 1-72 above as if fully set forth herein.

74. Under 35 U.S.C. § 292, any product marked with a patent number must be covered by that patent.

75. Valent marked, affixed, and/or advertised the Resource Line Products as being covered by the '695 Patent.

76. The Resource Line Products have ceased being covered by the '695 Patent.

77. Valent's demonstrated awareness of its patents and patent expiration dates establishes that it knew or should have known that the Resource Line Products have ceased being covered by the '695 Patent.

78. Upon information and belief, Valent intended to deceive the public by marking, affixing, or advertising the Resource Line Products as being covered by the '695 Patent.

79. Defendant Valent has violated 35 U.S.C. § 292 by falsely marking, affixing, and/or advertising its Resource Line Products as being subject to the '695 Patent with intent to deceive the public when those products are unpatented.

80. Plaintiff is a "person" within the meaning of 35 U.S.C. § 292 and is entitled to bring suit pursuant to that statute.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendant Valent and respectfully requests that the Court:

- (a) enter a judgment in favor of Plaintiff that Defendant Valent falsely marked items in violation of 35 U.S.C. § 292;
- (b) order that Defendant Valent cease its false marking of the Select Line and Resource Line Products and related advertising;
- (c) order that Defendant Valent pay a fine of \$500 for each instance of false marking;
- (d) order that one-half of the fine or penalty is paid to Plaintiff and that one-half is paid to the United States;
- (e) award Plaintiff its reasonable attorneys' fees;
- (f) award pre-judgment and post-judgment interest; and
- (g) grant such other and further relief as the Court deems appropriate and just.

Dated: May 6, 2011

FARELLA BRAUN + MARTEL LLP

By: 

James W. Morando

Attorneys for Plaintiff  
AGSAVER LLC



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Attorneys for Plaintiff  
AgSaver LLC